

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SALLY WHEELER,

Plaintiff,

v.

Civil Action No.
5:22-cv-00074 (GTS/TWD)

UNITED STATES OF AMERICA,

Defendant.

**STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF
FEDERAL TORT CLAIMS ACT CLAIMS PURSUANT TO 28 U.S.C. § 2677**

It is hereby stipulated and agreed by and between the plaintiff, SALLY WHEELER (“Plaintiff”), and the defendant, UNITED STATES OF AMERICA (“Defendant”), collectively, “the parties,” by and through their respective attorneys, as follows:

1. The parties do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the above-captioned action under the terms and conditions set forth in this Stipulation for Compromise Settlement and Release of Federal Tort Claims Act claims pursuant to 28 U.S.C. § 2677 (“Stipulation for Compromise Settlement”).

2. Defendant agrees to pay to Plaintiff the sum of FIFTY THOUSAND DOLLARS (\$50,000.00), which sum shall be in full settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof, resulting, and to result, from the incident that gave rise to the above-captioned action, including any claims for wrongful death, for which Plaintiff or her guardians,

heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States of America, its agents, servants, and employees.

3. Plaintiff and her guardians, heirs, executors, administrators or assigns hereby agree to accept the sum of FIFTY THOUSAND DOLLARS (\$50,000.00) in full settlement, satisfaction, and release of any and all claims, demands, rights, and causes of action of whatsoever kind and nature arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof which they may have or hereafter acquire against the United States of America, its agents, servants and employees on account of the same incident that gave rise to the above-captioned action, including any future claim or lawsuit of any kind or type whatsoever, whether known or unknown, and whether for compensatory or exemplary damages.

Plaintiff and her administrators or assigns further agree to reimburse, indemnify, and hold harmless the United States of America, its agents, servants, and employees from and against any and all causes of action, liens, rights, or subrogated or contribution interests for such property damage incident to or resulting from further litigation or the prosecution of claims by Plaintiff or her administrators or assigns against any third party or against the United States of America, its agents, servants, and employees, on account of the same incident that gave rise to the above-captioned action

Plaintiff and Plaintiff's guardians, heirs, executors, administrators, and assigns further stipulate and agree that they are legally responsible for any and all past, present, and future liens and past, present, and future claims for payment or reimbursement, including any past, present, and future liens or claims for payment or reimbursement by any individual or entity, including an insurance company, Medicaid (including the State of New York), and Medicare, arising from the

injuries that are the subject matter of this action. Plaintiff stipulates and agrees that she will satisfy or resolve any and all such past, present, and future liens or claims for payment or reimbursement asserted by any such individual or entity.

4. This Stipulation for Compromise Settlement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States of America, its agents, servants, or employees, and it is specifically denied that they are liable to Plaintiff. This settlement is entered into by all parties for the purpose of compromising disputed claims under the Federal Tort Claims Act and avoiding the expenses and risks of further litigation.

5. It is also agreed, by and among the parties, that the settlement sum of FIFTY THOUSAND DOLLARS (\$50,000.00) represents the entire amount of the compromise settlement, and that the respective parties will each bear their own costs, fees, and expenses and that any attorney's fees owed by the Plaintiff will be paid out of the settlement amount and not in addition thereto.

6. It is also understood by and among the parties that pursuant to 28 U.S.C. § 2678, attorney's fees for services rendered in connection with this action shall not exceed 25 percent (25%) of the amount of the compromise settlement.

7. The persons signing this Stipulation for Compromise Settlement warrant and represent that they possess full authority to bind the parties or persons on whose behalf they are signing to the terms of the Stipulation for Compromise Settlement.

8. Payment of the settlement amount will be made by check in the sum of FIFTY THOUSAND DOLLARS (\$50,000.00), drawn on the United States Postal Service and made payable to Sally Wheeler and Hinman Howard and Katteli, LLP, as attorneys for Plaintiff. The check will be mailed to Plaintiff's attorney at the following address: Richard H. Miller, III, Esq., Hinman, Howard & Katteli, LLP, 80 Exchange Street, PO Box 5250, Binghamton, New York

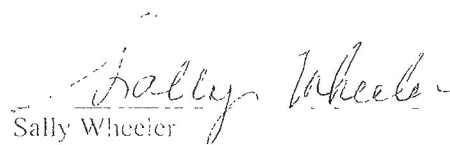
13902-5250. Plaintiff's attorney agrees to distribute the settlement proceeds to Plaintiff, and to undertake any and all actions within Plaintiff's control to obtain a dismissal of the above-captioned action in its entirety with prejudice, with each party bearing its own fees, costs, and expenses.

9 The parties agree that this Stipulation for Compromise Settlement, including all the terms and conditions of this compromise settlement and any additional agreements relating thereto, may be made public in their entirety, and Plaintiff expressly consents to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

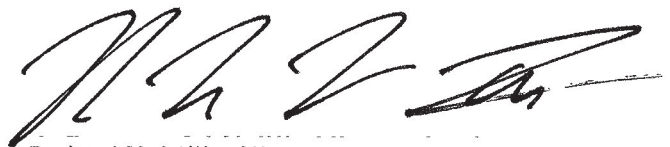
10. By her signature hereon, Plaintiff certifies that Sally Wheeler is not an infant or incompetent for whom a guardian has been appointed.

11. It is contemplated that this Stipulation for Compromise Settlement may be executed in several counterparts, with a separate signature page for each party or signatory. All such counterparts and signature pages, together, shall be deemed to be one document.

Dated: 8/4/2023, 2023


Sally Wheeler
Plaintiff

Dated 8/18, 2023

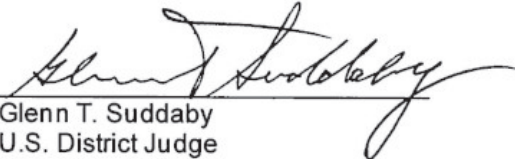

Richard H. Miller III
Bar Roll No. 5870126
Attorney for Plaintiff
Hinman Howard & Kattell, LLP
80 Exchange Street, PO Box 5250
Binghamton, New York 13902-5250

Dated: August 18, 2023

Digitally signed by
EMER STACK
Date: 2023.08.18
16:06:32 -04'00'

Emer M. Stack
Assistant United States Attorney
Bar Roll No. 700843
Attorney for the United States
United States Attorney's Office
100 South Clinton Street, Ste. 900
Syracuse, New York 13261

SO ORDERED:


Glenn T. Suddaby
U.S. District Judge

Dated: August 18, 2023.
Syracuse, New York